

EDWARD R. FINCH

IBLA 85-390

Decided June 30, 1986

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying a petition for reinstatement of noncompetitive oil and gas lease. M-54866.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:  
Termination

Under 30 U.S.C. § 188(c) (1982), BLM has no authority to reinstate an oil and gas lease terminated automatically for nonpayment of annual rental where the rental payment was not tendered at the proper office within 20 days after the anniversary date.

APPEARANCES: Edward R. Finch, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Edward R. Finch has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated January 11, 1985, denying his petition for reinstatement of noncompetitive oil and gas lease M-54866.

Effective October 1, 1982, BLM issued a noncompetitive oil and gas lease to appellant for 3,422.69 acres of land situated in Phillips County, Montana, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). By notice dated December 19, 1984, BLM informed appellant that his lease had terminated on October 1, 1984, the anniversary date of the lease, for failure to pay the annual rental or before that date. BLM also outlined two procedures for appellant to seek reinstatement of the lease, pursuant to either section 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982) (class I reinstatement) or section 31(d) and (e) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(d) and (e) (1982) (class II reinstatement).

On January 7, 1985, appellant filed with BLM a petition for a class I reinstatement, explaining that the failure to pay the annual rental timely was due to a "clerical error." Appellant argued that the failure to pay timely was justifiable because "several hundreds of checks per month are handled by the person involved" and that he acted with reasonable diligence because "there are standing instructions in this office to pay all of [the] approved bills within 48 hours of receipt." Appellant submitted a check in the amount of \$3,423 to pay for the back rental owed.

In its January 1985 decision, BLM denied appellant's petition for reinstatement because appellant's check in payment of the back rental owed was not tendered within 20 days of the lease anniversary date, but was received 98 days after that date. BLM also noted that no justifiable reason for the late payment had been shown.

In his statement of reasons for appeal, appellant contends that he "promptly paid" the annual rental due in response to the December 1984 notice of termination of the lease and, further, that the rental was not paid timely because his secretary erroneously believed payment had already been made. Appellant explains the appropriate check was "drawn timely," but, because the secretary "put it aside," the check was not signed and mailed in time to be received prior to the lease anniversary date.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that, upon the failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of producing oil or gas in paying quantities, the lease terminates automatically by operation of law. See 43 CFR 3108.2-1(a). Since appellant's rental payment was not received on or before the anniversary date, oil and gas lease M-54866 terminated automatically.

Under 30 U.S.C. § 188(c) (1982), a terminated oil and gas lease may be reinstated where the rental is paid within 20 days of the lease anniversary date upon a showing by the lessee that the failure to pay on or before the lease anniversary date was either justifiable or not due to a lack of reasonable diligence. Harriet C. Shaftel, 79 IBLA 228, 230 (1984); Vernon I. Berg, 72 IBLA 211 (1983).

Appellant clearly did not pay or tender his overdue annual rental within 20 days of the lease anniversary date, i.e., October 1, 1984. Appellant admittedly paid only in response to the termination notice, dated December 19, 1984, which payment was received on January 7, 1985. In the absence of tender of the annual rental within 20 days of the anniversary date, there is no authority for reinstatement under the terms of 30 U.S.C. § 188(c) (1982) (class I reinstatement). Maynard J. Bonesteel, 82 IBLA 237 (1984); Harriet C. Shaftel, supra at 230. We conclude that BLM properly rejected appellant's petition for a class I reinstatement. 1/

1/ In its January 1985 decision, BLM also advised appellant he could apply for a class II reinstatement. On Jan. 25, 1985, appellant filed a petition for a class II reinstatement. By decision dated Feb. 4, 1985, BLM specifically required appellant to submit the back rental owed, computed at the new rate of \$5 per acre, "prior to expiration of the sixty (60) days allowed in our termination notice of December 19, 1984." On Feb. 8, 1985, appellant apparently withdrew his petition for a class II reinstatement. In any case, appellant would not be entitled to a class II reinstatement if he has failed to pay the required back rental, computed at the new rate of \$5 per acre, on or before 60 days after he received the December 1984 termination notice, as required by 30 U.S.C. § 188(d)(2)(B) and (e)(2) (1982). Hugh Carter Crutchfield Trust, 87 IBLA 27 (1985); see 43 CFR 3108.2-3.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

John H. Kelly  
Administrative Judge

James L. Burski  
Administrative Judge.

